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The Law of Conspiracy in Its Relation to Labor Organizations

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The Law of Conspiracy in Its Relation to Labor Organizations.

The right of men to form organizations or unions is an exercise of the common law right of every citizen to follow his calling whether of labor or business as he thinks is for his own best interests. The tremendous advance in the organization of capital has caused a corresponding advance in the organization of labor. Combinations and co-operation are laws of human society. Experience teaches that men can accomplish their purposes best by organization and co-operation. The only limitations on this right to combine, whether of capital or labor, are that the personal and property rights of others must be respected.

Union men under the law of equal rights and equal opportunity, have a liberty of contracting as they please, working when they please and quitting when they please, but these same rights belong to non-union men and all employers of labor. The law recognizes no combinations of either men or manufacturers, made for the purpose of injuring, threatening or intimidating others.

Before entering upon a discussion of the law, it may be well to make a brief statement of the industrial trouble that existed in our own state the past year.

The recent strike among the tobacco workers in Tampa lasted for a period of seven months. It began in June and ended in January, and some twelve thousand men engaged in the tobacco trade were affected when the trouble was at its height. There had been some differences between the cigarmakers and some of the factories of the Manufacturers' Association over the question of the size of some of the cigars, for which certain prices had been agreed to be paid. Under the constitution and by-laws of the Cigarmakers' International Union of America no strike can legally take place unless it is approved by the proper authorities of the International Union. Several strike applications had been approved on account of these alleged differences between the employes and the manufacturers, but these applications were never enforced and no strike was declared in pursuance thereof. Under section 92 of the constitution of the Cigarmakers' International Union of America, no strike may be approved or sustained by the International Union for an increase in wages between the first day of April and the first day of October

of any year in the states of California, Virginia, South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Oregon and Washington.

But this shall in no wise preclude the approval of strikes against the reduction of wages or the truck system, or against the introduction of tenement house work. The truck system means where other than cash is paid for labor, and tenement house work is where the men are required to live in houses furnished by the management. It will therefore be seen that the only remaining cause for which a strike could have occurred in the industry in Tampa, between the first day of April and the first day of October, was the reduction of wages. The membership dues paid by the members of the union are thirty cents each week, and hence the revenue to be derived from the industry in Tampa by the unions would be approximately one hundred and eighty-seven thousand (\$187,000) dollars per year, and it was therefore very attractive to the labor leaders for the factories of Tampa to be unionized.

Furthermore, it was well known that as soon as the fight could be won by the unions at Tampa, they proposed to unionize the factories in Key West, Jacksonville and other cities in Florida as well as Cuba, and a fair estimate of the revenue to be derived from the unionization of all cigar factories in this state and Cuba would be about four hundred thousand (\$400,000) dollars per annum. It is admitted throughout the country that conditions affecting the tobacco workers in Tampa are and have been for many years, more satisfactory than exist in any other place in the world.

The prices received by them are perhaps higher than in other places, and it is well known that the makers of clear Havana cigars receive the highest rate of wages of any other class of laborers, except the glass blowers, many of them working the usual hours, receiving from twenty-five to forty-five dollars per week. The only real issue between the manufacturers and the men was the recognition by the manufacturers of the Cigarmakers' International Union. Up to the 25th of July last year, about seven thousand of the cigarmakers of Tampa had joined the union, and the time seemed opportune for the union forces to capture the city, notwithstanding, under their constitution, no legal strike could be called for an existing cause at that time. The leaders of the movement assembled crowds of several hundred cigarmakers, and marched on the various factories, demanding the recognition of the Cigarmakers' International Union within twenty minutes or strikes would be called in the factories. In some cases the management of the factories were informed that they would be ruined and the tobacco then wet for use would not be worked up, and the disturbances became so great that the manufacturers resorted to the expedient of discharging a certain

number of their employes each week, and finally, after numerous strikes had been called, all of the balance were discharged. In order to secure benefits for the men out of employment, the trouble in Tampa was called by the leaders a lockout. "A declaration on the part of an employer or combination of employers to the effect that their employes must cease their connection with the union or cease work, or any combination entered into by a number of employers for the purpose of throwing their employes out of employment without any cause or action on their part, shall be deemed a lockout." Section 93, constitution of Cigarmakers' International Union.

These conditions did not exist in Tampa. Mr. George W. Perkins, president of the Cigarmakers' International Union of America, in a circular issued on September 22, 1910, after receiving reports from all possible sources, described the trouble in Tampa as follows: "The nature of the trouble in Tampa is not in the nature of a lockout, but a square toed strike." In its incipency the leaders of the movement undoubtedly decided to unionize all factories in Tampa, and if possible to do so by peaceful methods, but their actions indicate that they proposed to unionize them by threats, violence and intimidation if these methods became necessary to accomplish the purpose. During the latter part of August, some of the factories decided to re-open their doors, and on these occasions, Mr. Jose de la Campa, who was president of the Joint Advisory Board of the unions in Tampa estimated that as many as fifteen hundred people assembled in front of one of the factories, when they opened for the purpose of permitting men to return to work, many of these men were armed with pistols, some with clubs and rotten eggs were freely applied to anyone that wanted to go to work. Threats were openly made against returning employes, and according to the sworn statement of some witnesses, de la Campa addressed them on this occasion and stated in substance: "Let anybody go to work that wants to, and we will get them tonight and burn up the town." It is needless to say that under these circumstances the re-opening of the factories was a failure and that practically no one returned to work. Strike breakers were severely beaten and threatened, some were taken to the labor temple and threatened with bodily harm if they went to work.

On September 13, Jose Cosio, a well known manufacturer was fired at by a would-be assassin as he was getting on a street car, and on the same day, Jose Arango and Enrique Rivero, employees of M. Valle Company were fired at by strikers and on the afternoon of September 14, J. F. Easterling, bookkeeper for Bustillo Brothers & Diaz, was shot in the back in front of the firm's factory in West Tampa as he was going into the factory. There were a large num-

ber of cigarmakers in front of the factory from which direction the shots were fired, but no one seemed to know who did the shooting. A few days later he died, and on September 20 Angelo Albano and Castange Ficcarrota were arrested as being participants in the Easterling assassination. The night of that day while they were being transported from West Tampa, where they were arrested, to the county jail of Hillsborough County, they were held up by an unknown crowd of people, taken from the officers and lynched. The factory of Balbin Brothers was burned and the brick building owned by the Tampa Tribune, which had made a determined fight against the strikers, was set on fire. Anonymous letters, threatening the manufacturers, resulted in many of them and their families leaving the city. The cities of Tampa and West Tampa swore in large numbers of special policemen, but even with their assistance, the many disorders in the city had not been put down. Incendiary addresses were made by their leaders, and the men were wrought up against the manufacturers. The leaders finding it impossible to whip the manufacturers into line and many of their men having left Tampa for the purpose of seeking employment elsewhere, informed their men that they could work in non-union factories anywhere else in the State, but that they could only work in the union factories in Tampa.

Some of the leaders went so far in their addresses to the men as to state that when they came to Tampa some twenty years ago they had found it a cypress pond and an alligator hole, and that they proposed to continue this fight until they won or the same condition existed here as existed when they came. This declaration of a war of extermination against Tampa and her citizenship aroused the best blood of her people. Many of her professional and business men had been in sympathy with the strikers and hoped they would succeed, but when they found these conditions existing, the business and professional men of the city, with practical unanimity formed the Citizens' Committee, which committee was composed of about six hundred of the best citizens of Tampa, and its course was directed by a secret committee of fifteen, whose names are even yet, known to but few of its members. Upon the organization of the committee the following resolutions were adopted:

Whereas, Tampa is the largest clear Havana cigar manufacturing center in the world, manufacturing in normal times three hundred million cigars per annum, which is more than one-third of the total clear Havana cigars consumed annually in the world, and

Whereas, This represents an approximate income to the industry of twenty-two million dollars per annum, of which in excess of eight million dollars, is spent in this city; and

Whereas, This industry furnishes approximately sixty-five per

cent of the total income of the city and makes a basis of several other million of dollars paid in wages annually in this city; and

Whereas, This industry has been largely built up by the progressiveness and inducements held out by the various citizens of the city of Tampa in inducing this industry to locate in our midst; and

Whereas, A deplorable condition now exists whereby the continued existence of this industry is seriously threatened; and

Whereas, By the action of agitators among the working classes of this city such a condition of lawlessness has been brought about as that nearly all of the manufacturers have left the city and established branch factories elsewhere, in which branch factories various cigarmakers from this city are now working and working without demanding the recognition of any union; and

Whereas, The people of this city have always pledged the manufacturing interest that in any and all events the industry will be protected and they will be allowed to peacefully pursue their business; and

Whereas, It is necessary, because of conditions here that the citizens express themselves at this time upon this serious situation, and the questions confronting it; THEREFORE BE IT RESOLVED

First. That we are for Tampa, first, last and all the time.

Second. That we recognize the right of the manufacturers or any other employers to employ such persons and upon such conditions as to them may seem proper in the successful and proper management and handling of their business, and while we recognize the right of the employees to refuse to work if conditions do not suit them, still we do not recognize the right of any employee, or any organization of employees, to prevent any other person or persons from seeking employment or being employed.

Third. That we deplore lawlessness of any kind or character and that we cannot too strongly condemn the assassinations, arson and various other acts of lawlessness that have been existing in this community for some weeks past.

Fourth. That we call upon the manufacturers and those cigar makers who want to work and who have left this community to at once come back to this city and undertake to pursue their business as they have heretofore pursued it.

Fifth. That we pledge ourselves, in the event of their so doing and of the factories being opened and the men being again requested by the manufacturers to work for them, that we will protect the manufacturers and the working men to the fullest extent possible, to the end that property and life may be safe.

Sixth. We further pledge ourselves, as a whole, to stand by in every respect, a committee that has been already appointed by the

business interests of this city to devise ways and means of settling this strike.

Seventh. We further serve notice upon the Joint Advisory Board of the workers engaged in the cigar industry that we are satisfied that they can prevent acts of lawlessness in this community in the future, and that if there is any further attempt at assassination, arson, or any other act of lawlessness, that we expect to hold the individual members of the Advisory Board responsible for such acts.

Be it further Resolved

That copies of these resolutions be furnished the press of the city for publication.

The mayors of the cities of Tampa and West Tampa appointed and swore in, the members of the Citizens' Committee as special policemen. From the day of the organization of the Citizens' Committee, peace and quietude, instead of riot and disorder reigned in the city of Tampa. The manufacturers who had opened branch factories in other parts of the United States were guaranteed safety to themselves, their families and their men who desired to return to work, and were invited to return and re-open their factories. This was done on Monday, October 17, and the members of the Citizens' Committee were stationed in various parts of the city and at the various factories and patrolled the streets in automobiles for the purpose of preserving order and guaranteeing protection to employes returning to work. The leading members of the Joint Advisory Board, and particularly those who had led the large crowds of cigarmakers in calling strikes in the factories, and attending the factories that re-opened for the purpose of preventing men going to work, were arrested on the charge of conspiracy and being unable to give bond were committed to jail. Jose de la Campa, J. F. Bartlum and Brit Russell, three of the principal leaders arrested were afterwards tried and convicted before a jury of the crime and sentenced by the court to the maximum penalty of one year imprisonment. Some of the other members of the Joint Advisory Board against whom informations were filed on the same charges escaped and are still fugitives from justice, others have been arrested and are to be tried later. The particular charge on which the convictions were secured was that the defendants with others had entered into a conspiracy for the purpose of preventing Jose Maraia Alvarez and Ramon Fernandez, wrapper selectors, from procuring work in the factory of the M. Valle Company. It is undoubtedly true that many of the cigarmakers who went into this combination with laudable intentions, and who remained in it after it became an unlawful conspiracy, cannot understand how a member of this conspiracy can be guilty when he did not know the parties to the transaction. A more extensive knowledge of the law of conspiracy will be of value to

both employer and employe, so that all men interested may know the effect of combinations in which they enter and understand their criminal responsibility for the acts of their fellow workmen when carrying out the common design whether they were present or not. Mr. Samuel Gompers, president of the American Federation of Labor, made grave charges against the peace and order of our city and against the action of the members of the Citizens' Committee, and requested the Governor of our State to go to Tampa and make a thorough investigation of his charges and of the facts in connection with the entire transaction. Governor Albert W. Gilchrist came to Tampa and was furnished with certain charges against the Citizens' Committee by the unions. These charges were answered seriatim by the Citizens' Committee, and after a full investigation he found that there had been some threats and disorder on both sides of the controversy, but that law and order had been maintained since the organization of the Citizens' Committee. I quote an extract from the answer made by the Citizens' Committee to the charges preferred before Governor Gilchrist: "In the words of the South's greatest orator, spoken at the tomb of the South's most beloved son," when a whole nation as a single man takes up arms and fills the world with glory in a cause it deems right it needs no historian to apologize for it, it is in itself its own justification," so in the present case, the reading of the roll of the Citizens' Committee of Tampa, who for a period of nine weeks, have protected the peace and law of this city, is its own justification, and any charges against that committee needs no further answer than the calling of that roll. The names are set out hereinafter. However, as the world at large may not know the personnel of that committee, and as false and baseless charges have been published broadcast to the world stamped with credibility by one who has and can have no true knowledge of the situation, but whose position in the world might give credibility to such charges, we therefore proceed seriatim to answer the slanders circulated in regard to this city." Then followed a complete refutation of the charges that had been made by Mr. Gompers and that had been preferred by the unions against the Citizens' Committee. The men being guaranteed protection gradually returned to work until over two thousand were at work in the association factories, when on January 25, the strike was declared off by the Joint Advisory Board.

The Common Law

The first question that naturally arises is, is conspiracy indictable at common law? Under Section 59 of the General Statutes of Florida, the Common and statute laws of England, which are of a gen-

eral and not a local nature with the exceptions hereinafter mentioned, down to the fourth day of July, 1776, be and they are hereby declared to be of force in this State; provided that the Statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature, of this State, and under Section 3194, the common law of England in relation to crimes, except so far as the same related to the modes and degrees of punishment shall be of full force in this State, where there is no existing provision by the statute on the subject. When there exists no provision for punishment by statute, the court shall proceed to punish such offense by fine or imprisonment, or both, but the fine shall not exceed five hundred dollars, nor the imprisonment twelve months. "Conspiracy is the corrupt agreeing together of two or more persons to do by concerted action something unlawful, either as a means or an end." First Bishop on Criminal Law, Section 171. "To constitute a conspiracy either the act conspired or the manner of its doing must be unlawful." *Jetton-Dekle Lumber Co. vs. Mather, et al.* 53 Fla. 969. It is somewhat difficult to state exactly what is the common law on this subject, but it seems that the overwhelming weight of authority is to the effect that a conspiracy within the definitions given above is a crime at common law. "The general rule of the common law is that it is a criminal and indictable offense for two or more to confederate and combine together, by concerted means to do that which is unlawful or criminal, to the injury of the public, or portions or classes of the community, or even the rights of an individual." *Common wealth vs. Hunt*, 4th Metcalf 111, 121. In the State against *Burnham* 15 N. H. 401, it was held that "combinations against law or against individuals are always dangerous to the public peace and to public security. To guard against the union of individuals to effect an unlawful design is not easy, and to detect and punish them is often extremely difficult." Hawkins, in discussing the nature of conspiracies as offenses against public justice, and referring especially to the statute of 21 Edw. 1, relating to confederacies to procure the indictment of an innocent person, says, that, notwithstanding the injury intended to the party against whom such a confederacy is formed may perhaps be inconsiderable, yet the association to pervert the law, in order to procure it, seems to be a crime of a very high nature, and justly to deserve the resentment of the law." Hawkins, P. C. Chap. 27, Sec. 2. So in *Reg. vs. Parnell* 14 Cox, Cr. Cas. 508, 514, it was observed that an "agreement to effect an injury or wrong to another by two or more persons is constituted an offense, because the wrong to be effected by a combination assumes a formidable character. When done by one alone it is but a civil injury, but it assumes a formidable or aggra-

vated character when it is to be effected by the powers of the combination. Justice Harlan delivering the opinion of the Supreme Court of the United States in the case of *Calagan vs. Wilson*, 127 U. S. 540, 32 Lawyers Co-Operative Publishing Company edition, page 228, says that: "at common law the crime of conspiracy is an offense of grave character, affecting the public at large." Justice Cockrell in the case of *Jetton-Dekle Lumber Company against Mather, et al.* 53 Fla. 978, says, "that the English law as to indictable conspiracy against workmen is so interwoven with harsh statutes passed in behalf of those in power that are wholly inconsistent with our ideas of freedom of contract, of life, liberty and the pursuit of happiness, as not to be applied in its rigor in this country," but it must be remembered that in that case there was no evidence of violence, threats, intimidation, boycotting or picketing, and that he was merely passing on the legality of an absolutely peaceable strike when an attempt was made to enjoin the unions from enforcing their rules against their members to the extent of such as worked for those employing non-union labor. All lawful attempts to raise wages are combinations by laborers to promote the interests of their trade and are highly commendable and cannot in any sense be classed as criminal conspiracies.

The Florida Statute

The statute law of Florida on this subject is found in Section 3515 of the General Statutes of Florida, as follows: "If two or more persons shall agree, conspire, combine or confederate together for the purpose of preventing any person or persons from procuring work in any firm or corporation, or to cause the discharge of any person or persons shall verbally or by written or printed communication, threaten any injury to life, property or business of any person for the purpose of procuring the discharge of any workmen in any firm or corporation or to prevent any person or persons from procuring work in such firm or corporation, such person or persons so combining shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars each, or imprisonment not exceeding one year." This statute has been only indirectly considered by the Supreme Court in the case of *Jetton-Dekle Lumber Company vs. Mather, et al.* 53 Fla. 969. Justice Cockrell in delivering the opinion of the court said: "Construing the act with reference to its restrictive title, it appears that only wrongful combinations against workmen are denounced, and that the combination must have for its main object or purpose the preventing of a certain person or persons from obtaining work or causing their discharge. An indictment based upon the

act would have to allege the combination to have for its main object or purpose the preventing of certain named persons from securing work with some firm or corporation or causing their discharge, for some reason, if the employer be an individual, not a firm or corporation, the statute does not purport to denounce the wrongful combination."

The Federal Statute

The United States Government likewise provides a remedy for combinations of this kind, Sections one, two and seven of the Sherman anti-trust law, being as follows: Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court. Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States or with foreign nations, shall be deemed guilty of a misdemeanor, and conviction thereof shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. Sec. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained and the costs of suit, including a reasonable attorney's fee. Recently a conviction was secured under this statute in the Eastern District of Louisiana. The defendants were delegates representing thirteen different labor unions in a central council known as the Dock and Cotton Men's Council. The indictments charged them with having formed an agreement and conspiracy in restraint of interstate and foreign commerce. Upon the trial of the two cases, consolidated, the judge directed a verdict in favor of the defendants in the indictment charging combination in restraint of interstate commerce. The other indictment went to the jury, and there was a verdict of guilty against three of the defendants. The indictment upon which the conviction was had, charged that the seventy odd defendants had entered into an agreement to re-

strain foreign commerce, and the facts were as follows: The Central American Steamship Company had declined to employ exclusively longshoremen to load freight upon their vessels; they carried so little freight other than fruit, that the longshoremen could not enforce their demands against the company, so they appealed to the Dock and Cotton Men's Council, and obtained from that council an order directing the Coal Wheelers' Union, which in itself, had no complaint against the Company, to refuse to coal the vessel for her voyage, and in this way, her voyage was delayed. The steamship Company had a contract with the coal furnishers in New Orleans to furnish them coal. The Coal Wheelers' Union as above stated, had no complaint whatever against the steamship company, or against their employers, the coal furnishers. The coal wheelers refused to coal the vessel only on account of orders received from the Dock and Cotton Mens' Council at the instance of the longshoremen, and in this way the latter forced the steamship company to sign the contract with them before the Coal Wheelers' Union would be permitted to coal the vessel. The steamship company, under duress signed this contract with the longshoremen, the Coal Wheelers' Union then coaled the vessel and she left on her voyage. The act of the defendants was a clear violation of the anti-trust law, and a clear restraint of foreign commerce and the convictions were eminently proper.

Whether a prosecution be under the common law, the statute law of our State or the Federal statute, the general principles and the evidence applicable are practically the same. The common design is the essence of the charge of conspiracy; but it is not necessary to prove that the defendants came together, and actually agreed in terms, to have that design and to pursue it by common means. If it is proved that they pursued, by their acts, the same object, often by the same means, one performing one part and another another part of the same, so as to complete it, with a view to the attainment of the same object, the jury will be justified in the conclusion that they were engaged in a conspiracy to effect that object, and this conclusion may be reached by the jury from the circumstances and the acts of the various parties engaged in the conspiracy. Persons entering into a conspiracy which has been previously formed are deemed in law parties to all acts done by other parties, before or afterwards, in furtherance of the common design. One who inflames the minds of others and induces them by violence to do an illegal act, is guilty of such act, though he takes no part there in. One who personally takes no part in an offense is nevertheless guilty of it, if he purposely excited other parties to commit it, and the act of one of several conspirators in the prosecution of their enterprise is considered the act of all, even though the defendants may have no

knowledge of the actual crime committed, provided it is within the purview of the common design. A conspirator may be guilty of a wrong which he did not specifically intend, if it came naturally or even accidentally through some other specific or general evil purpose. Therefore, when persons combine to do an unlawful thing, if the act of one proceeding or growing out of the common plan, terminates in a criminal result, though not the particular result meant, all are liable. Each conspirator is liable for the means employed by any of his fellow conspirators in accomplishing the unlawful purpose in which all are engaged. These well known principles of the law of conspiracy were laid down in the celebrated Chicago Hay Market case of Spies against the People, 126 Ills. 1, Third American State Reports, 321. This case was argued before the Supreme Court of the United States, and a petition for allowing a writ of error was denied. This was a conspiracy to bring about a change of government by peaceful means if possible, but if necessary by a resort to force, and the court held that such a conspiracy was unlawful. *Myers vs. State* 43, Fla. 500, 31 So. Rep. 275.

Civil Remedy

Independently of the Federal statutes the Supreme Court of New York has sustained an injunction against a conspiracy to interfere with business by a strike of employes for the purpose of unionizing the shops of all manufacturers in the trade. It is the case of *Max. M. Schwarcz*, as treasurer of the Cloak, Suit and Skirt Manufacturers' Protective Association, plaintiff against *International Ladies' Garment Workers Union*, et al., defendants, decided during the past summer, a record of which is found in Vol. 43, No. 127 of the *New York Law Journal*, August 29, 1910. This was an action brought by the plaintiff, as treasurer of an association of manufacturers of cloaks and skirts for women, against the labor unions, composed of operatives employed in the trade, to restrain them from interfering with the business of the members of the plaintiff's association and from acts in furtherance of a conspiracy, and it appeared on a motion to continue a preliminary restraining order, that the unions had organized and were maintaining a strike against the members of the plaintiff's association; that immediately after the strike had been called the unions had demanded of every manufacturer in the trade that he enter into a written agreement with the union, among other things, not to employ non-union labor, and that the members of plaintiff's association had conceded practically all such demands, except that for a closed shop. "A closed shop is an establishment in which employment is conditioned upon membership in a specified organiza-

tion commonly a labor union. On the other hand an "open shop" is an establishment in which there is no such condition of employment." Cooke Labor Unions, 2nd edition, page 113. This definition, however, differs considerably from the definition in use by the constitution of the Cigarmakers' International Union. They hold that a closed shop is one that is closed to members of the International Union, and their definition of a union shop corresponds with the definition given by Mr. Cooke of a closed shop. Mr. Cooke's definition is in general use and I believe is manifestly the correct one, and it is in this sense that the word is used in the decision of the Supreme Court of New York above referred to. The court held in that case that the primary purpose of the strike being to drive non-union employes out of the trade in the borough, except on condition of joining one of the defendants unions, the purpose was against public policy and illegal. The facts in that case were practically the same as those that existed in the strike at Tampa, and this remedy could have undoubtedly been invoked by the manufacturers here if they had so desired. The remedy, however, by injunction under the Federal statute would undoubtedly have been more stringent and effective. The action of the labor organizations was undoubtedly an interference with interstate commerce; "commerce consists in transportation (not necessarily all transportation, but certainly) including transportation of persons, tangible property, and (at least under some conditions) of intelligence." Cooke on labor unions, Sec. 184: The strike undoubtedly resulted in the manufacturers shipping only a small portion of their usual output of cigars to the various States of the United States, and on this ground the action of the employes resulted in a large diminution of transportation. This view was adopted by the Supreme Court of the United States in the case of *Loewe, et al. against Lawlor, et al.* 208 U. S. 274, 52 Law. Ed. 488. This was an action for the recovery of treble damages sustained by reason of a combination alleged in violation of the anti-trust act. Justice Holmes delivering the opinion of the court, said: "At the risk of tediousness, we repeat that the complaint averred that plaintiffs were manufacturers of hats in Danbury, Connecticut, having a factory there and were then and there engaged in an interstate trade in some twenty States other than the State of Connecticut; that they were practically dependent upon such interstate trade to consume the product of their factory, only a small percentage of their entire output being consumed in the State of Connecticut that, at the time the alleged combination was formed, they were in the process of manufacturing a large number of hats for the purpose of fulfilling engagements then actually made with consignees and wholesale dealers in States other than Connecticut and that, if prevented from carrying on the work of manufacturing

these hats, they would be unable to complete their engagements. That defendants were members of a vast combination called The United Hatters of North America, comprising about 9,000 members and including a large number of subordinate unions, and that they were combined with some 1,400,000 others into another association known as the American Federation of Labor, of which they were members, whose members resided in all the places in the several States where the wholesale dealers in hats and their customers resided and did business; that defendants were engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business to organize their workmen in the departments of making and finishing in each of their factories, into an organization, to be part and parcel of the said combination known as the United Hatters of North America, or as the defendants and their confederates term it, to unionize their shops, with the intent thereby to control the employment of labor in and the operation of said factories, and to subject the same to the direction and control of persons other than the owners of the same, in a manner extremely onerous, and distasteful to such owners, and to carry out such scheme, effort and purpose by restraining and destroying the interstate trade and commerce of such manufacturers, and by means of intimidation of, and threats made to such manufacturers and their customers in the several States by boycotting them, their product and their customers, using therefor all the powerful means at their command as aforesaid, until such time as, from the damage and loss of business resulting therefrom the said manufacturers should yield to the said demand to unionize their factories." The court held that the demurrer to the complaint should have been overruled as it stated a good cause of action.

Boycotts

In practically all trade disputes one of the principal weapons of the labor union is the boycott. There are boycotts of capital and boycotts of labor. Some authorities take the view that there is nothing illegal in boycotting if the boycott is merely the natural incident or outgrowth of some lawful relation apart from acts of violence or acts producing fear of violence, and it is claimed that the right to institute a mere boycott "is a part of the liberty of action which the Constitutions, State and Federal, guarantee to the citizen," but boycotts have universally been held illegal. The recent settlement of the litigation between the Buck's Stove and Range Company, and the American Federation of Labor has been criticised by the press of the country, as they stated that they wanted

the Supreme Court of the United States to pass on this much mixed question, but that case was undoubtedly settled because it was manifest that the decision would have been against the legality of the boycott. The Supreme Court of the United States in the case of *Loewe vs. Lawlor*, 208, U. S. Supra. has already decided that combinations, such as boycotts are illegal both at common law and under the Sherman act, holding them to be criminal and indictable offenses. One of the most elaborately considered of the cases on this subject is that of *Quinn vs. Leathem*, 1901, Appeal Cases, 945. "In that case, a trade union of butchers' assistants notified Leathem that they would not work for him, and that they would refuse to work for one Munce, a customer of his, unless he unionized his shop by discharging his then assistants; and, Leathem having refused to discharge his men, they also notified Munce, that if he bought Leathem's meat, they would not work for him, and by this means, took Munce's trade from Leathem, who brought the action for damages. Held, that "a combination of two or more, without justification or excuse, to injure a man in his trade by inducing his customers or servants to break their contracts with him, or not to deal with him, or to continue in his employment is, if it results in damages to him, actionable. The following are from opinions of various judges in that case: "If upon these facts so found, the plaintiff could have no remedy against those who had thus injured him, it could hardly be said that our jurisprudence was that of a civilized community." Lord Halsbury. "A man may resist without much difficulty the wrongful act of an individual, but it is a very difficult thing when one man has to defend himself against the wrongful acts of many combined together to do him wrong. The defendants conspired to do harm to Munce, in order to compel him to do harm to Leathem, and so enable them to reap their vengeance upon Leathem's servants, who were not members of their union."—Lord Mc Nulton.

"Much consideration of the matter has led me to be convinced that a number of actions and things, not in themselves actionable or unlawful, if done separately, without conspiracy, may, with conspiracy, become dangerous and criminal, just as a grain of gunpowder is harmless, but a pound may be highly destructive or as the administration of one grain of a drug may be beneficial as a medicine, but administered frequently and in large quantities with a view to harm, may be fatal as a poison. Such conspiracy is a powerful engine, which in this case, has, I think, been employed by the defendants for the purpose of organized and ruinous oppressions."—Lord Brampton. "Boycotts though unaccompanied by violence or intimidation, have been pronounced unlawful in every State of the United States where the question has arisen, unless it be in Minnesota."

The decisions in which last named State are now to the same effect. (Gray vs. Council, 91, Minn. 171). The Federal Courts have decided the matter in the following cases: U. S. vs. Kane, 23, Fed. Rep. 748; in re Wabash R. R. Co. 24 Fed. Rep. 217; Old Dominion S. S. Co. vs. McKenna et al., 30 Fed. Rep. 48; Emack vs. Kane, 34 Fed. Rep., 47; Casey vs. Union, 45 Fed. Rep. 135, 143-6; Coeur d'Alene vs. Miners Union 51 Fed. Reo. 260-7; Toledo Ry. Co. vs. Penn. Co. 54, Fed. Rep. 746, 756; Thomas vs. R. R. Co. 62, Fed. Rep. 803-5-817-8; Oxley Stave Co. vs. Union, 72 Fed. Rep. 695; U. S. vs. Weber, 114 Fed. Rep., 950; Brewing Co. vs. Hanson 144, Fed. Rep. 1011, Loewe vs. Cal. Federation, 139 Fed. Rep. 83; Arthur vs. Oakes, 24, U. S. App., 258-9; Callan vs. Wilson, 127 U. S., 540 Loewe vs. Lawlor, 208 U. S. 274, 294-5.

The following decisions from the State Courts will show that there is no difference between the courts on the subject:

State vs. Stewart, 59 Vt., 274, 283, 290.
 Martel vs. White, 185 Mass 255, 261.
 Pickett vs. Walsh, 192, 572.
 State vs. Glidden, 255, Conn., 75.
 Barr vs. Essex Council, 53, N. J. Eq. 101, 112, 115.
 Purvis vs. Brotherhood, 214, Pa. St. 348, 353.
 Lucke vs. Clothiers' Assn. 77 Md., 405-6.
 My Maryland Lodge vs. Adt. Co. 100 Md. 249.
 Cramp vs. Commonwealth, 84 Va., 929.
 Brown vs. Pharmacy Co. 115, Ga., 459.
 Graham vs. R. R. Co., 47, La Ann. 214.
 Dalls vs. Winfree 80 Tex. 400.
 Jackson vs. Stanfield, 137, Ind., 592.
 Doremus vs. Hennessy, 176, Ill., 608.
 Purington vs. Hinchcliffe, 219, Ill., 166-7.
 Beck vs. Union, 118, Mich., 497.
 Howwarden vs. Council, 111, Wis., 545.
 Gray vs. Mitchell, 207, Pa., St. 79.
 Brown vs. Jacobs Co., 115 Ga., 429.

Also the following:

"A single individual may well be left to take his chances in a struggle with another individual. But in a struggle of a number of persons combined together to fight an individual, the individual's chance is small if it exists at all. It is plain that a strike by a combination of persons has a power of coercion that a strike by an individual does not have. The result of this greater power of coercion on the part of a combination of individuals is that what is lawful for an individual is not a test of what is lawful for a com-

bination of individuals; or, to state it in another way there are things that it is lawful for an individual to do which it is not lawful for a combination of individuals to do."

Pickett vs. Walsh, 192, Mass., 572.

"It is one thing for an individual, or for several individuals, each acting upon his own responsibility and not in co-operation with others, to form the purpose of inflicting actual injury upon the property or rights of another. It is a different thing in the eye of the law for many persons to combine or conspire with the intent, not simply of asserting their rights, or of accomplishing lawful acts by peaceable methods, but of employing their united energies to injure others or the public. An intent on the part of a single person, to injure the rights of others, or of the public, is not in itself a wrong of which the law will take cognizance unless some injurious act is done in pursuance of the lawful intent, but a combination of two or more persons with such intent and under circumstances that give them, when so combined, a power to do an injury they would not possess as individuals acting singly, has always been recognized as in itself wrong and illegal." Mr. Justice Harlan in *Athur vs. Oakes*, 63, Fed. Rep., 310. The Supreme Court of the United States in the case of *Grenada Lumber Company against Mississippi*, 217, U. S., pp. 440-441, said: "An act harmless when done by one may become a public wrong when done by many acting in concert, for it then takes on a form of conspiracy and may be prohibited or punished, if the result be hurtful to the public or to the individual against whom the concerted action is directed."

In conclusion, referring to the local trouble in Tampa, I will say that the hardships and privation suffered by the men and their families and the severe consequences to the manufacturers are a guarantee that we will have no more trouble of this kind for a long time to come.

The economic waste of this strike has been great. The men have lost about four million dollars in wages alone. Lines of industry dependent upon the cigar trade were paralyzed, while the losses in customers and trade to the manufacturers has been enormous. Strikes always entail a tremendous loss and expense. Diplomacy is far more effective and less expensive. This strike, however, has not been without its lessons. It is not believed that the Cigar-makers' International Union will ever permit its members again to call a general strike in violation of its constitution and when conditions affecting its members as a whole are better than in any other place in the world.

It must not be understood, however, that the manufacturers had a monopoly of right on their side of the controversy or that the men had no just grievances against some of the manufacturers. It is

undoubtedly true that in some cases the men were from time to time compelled to increase the size of a cigar without additional compensation, until there was a total disregard of the prices agreed upon. This was a gross injustice to the men as well as the manufacturers who were doing a legitimate business and living up to their agreement with their employees. It enables the dishonest manufacturer to make his goods for less than his legitimate competitor. If the men had struck for this cause and confined their strike to this class of factories, they would have been sustained with practical unanimity by public sentiment and undoubtedly achieved a great victory. To prevent discriminations of this kind the men and the manufacturers should each appoint an inspector to visit the various factories and see that the scale of wages is enforced.

The manufacturers should understand that they must treat their employes with absolute justness and fairness and get closer to them in the future. They should organize a relief department similar to that in some of the great corporations of the country, for the purpose of providing sick, funeral and out-of-work benefits for the unfortunates. Its funds could be raised by each manufacturer contributing a small sum for each thousand cigars manufactured and if necessary a small tax on each of the employes.

Our entire citizenship is interested in preventing industrial strife and it is hoped that the time will soon come when strikes are no more.

